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IN THE SUPREME COURT  
STATE OF ARIZONA

In the matter of:	)	
	)	
PETITION TO AMEND RULE 94	)	Supreme Court No. R-20-_____
OF THE SUPREME COURT	)	(Expedited Consideration
RULES	)	Requested)
_____	)	

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend Supreme Court Rule 94 as proposed in the attached Appendix A.

**I. Purpose of the Proposed Rule Amendments.**

This rule petition is part of a package of proposals that the Arizona Judicial Council (AJC) unanimously voted to support in December 2019. The proposals are intended to establish and maintain high standards of performance and ethical conduct by elected clerks of superior court in administering justice and serving the public. The proposals were submitted to the AJC with the full support of the Arizona

Superior Court Clerks Association and included the supreme court rule amendments establishing a clerk ethics board, which are the subject of this petition; a code of conduct for superior court clerks; and a comprehensive education program for newly or recently elected clerks and senior staff.

The draft rules establishing the ethics board are, in large part, modeled after supreme court rules governing the Commission on Judicial Conduct. During the past several months, petitioner has gathered and incorporated comments from presiding superior court judges, clerks of the superior court, and superior court administrators.

Concurrent with this petition, petitioner will file a proposal for a clerk's code of ethics, to be adopted as a section of the Code of Judicial Administration. That proposal is substantially similar to the judicial employee code of conduct (ACJA § 1-303) with modifications needed to make the code provisions more specifically applicable to elected clerk of court. The proposal includes ethical requirements relating to political activities that are similar to those followed by judges. The proposed code of ethics is expected to be presented to the AJC for approval at its June 2020 meeting.

## **II. Request for Emergency Adoption.**

Petitioner requests the Court order an abbreviated formal comment period and reply deadline and consider this petition at its 2020 annual rules agenda, as permitted

by Supreme Court Rule 28(h). An abbreviated comment period is appropriate in this case, because the proposal has already been extensively discussed and reviewed by the primary stakeholders and approved by the AJC.

Respectfully submitted this 20th day of April, 2020.

By /S/  
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## APPENDIX A

### Supreme Court Rule 94.1[new]

**(a) Purpose.** The purpose of the Clerks of the Superior Court Conduct Board (board) is to establish and maintain high standards of performance and ethical conduct by clerks of the superior court (clerks) in administering justice and serving the public. Any remedies imposed or recommended by the board shall be sufficient to protect the public and to restore and maintain public confidence that the clerk will faithfully perform the duties of the office in the future.

Only complaints alleging conduct occurring during the clerk's campaign for office or term in office that rises to the level of ethical violations, significant office mismanagement, or operational problems that have continued after the clerk had been given an opportunity to address them may be considered by the board.

**(b) Scope of Authority.** The board has authority over the elected clerk of court in each county established in Article 6, Section 23 of the Arizona Constitution and clerks appointed pursuant to ARS § 16-230(A).

**(c) Board Membership and Operations.** The board shall be comprised of seven members appointed by the chief justice for three-year terms. Terms shall be staggered for initial appointments and members may be reappointed at the discretion of the chief justice. Membership shall include an incumbent superior court clerk; a retired superior court clerk; a retired, former, or current superior court presiding judge; the Administrative Director of the Courts (director) or designee; one public member nominated with majority approval of the fifteen elected clerks and appointed by the chief justice; one public member appointed by the chief justice; and an additional member selected at the discretion of the chief justice. The chief justice shall designate the board chair.

(1) Meetings. The chair shall establish meeting and board hearing times, as necessary, to perform the duties of the board.

(2) Quorum. Four members of the board shall constitute a quorum for the transaction of the board's duties.

(3) Expenses. Board members shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties.

(4) Disqualification. A member of the board shall disqualify himself or herself in any matter in which the member has a conflict of interest.

**(d) Authorized Complainants.** The director or designee, the superior court presiding judge, and the county human resource officer of the county in which the clerk serves are the only entities authorized to file complaints with the board.

**(e) Prohibition Against Retaliation.** A clerk against whom a complaint is filed shall not directly or indirectly engage in any act of retaliation against any person who files a complaint or cooperates with an investigation relevant to the complaint.

**(f) Investigation of Allegations.** The complainant shall have full responsibility for ensuring that the matters contained in a complaint are thoroughly investigated, accurate, and well documented before submitting a complaint to the board.

**(g) Presentation of Information to the Board.** The complainant or designee shall file written allegations and supporting documentation with the human resources officer of the Administrative Office of the Courts (AOC). The clerk shall have the opportunity to respond to the allegations, which may be in person, in writing, or both at the discretion of the board.

**(h) Board Procedures.**

(1) Initial Screening. The staff shall conduct an initial review of complaints received and shall reject the complaint if the complainant is not one of the entities authorized to file a complaint.

(2) Request for Response from Clerk. If on review of a complaint the staff determines further action is warranted, the complaint shall be forwarded to the clerk named in the complaint with a request to respond in writing. The clerk shall be allowed 10 workdays to file a response with the board. For good cause shown, the chair of the board may grant an extension of time to file a response to the complaint. The board may not initiate formal board proceedings without first having provided such notice and opportunity to the clerk.

(3) Board Interview. After reviewing the clerk's response, if the board determines an interview is required or requested, an interview shall be scheduled. The interview shall be closed to the public.

(4) Findings. The board shall issue findings and take such action as it deems appropriate and authorized by these rules.

(5) Burden of Proof. The complainant has the burden to prove by a preponderance of the evidence that the allegations of the complaint are true.

(6) Recordings of Proceedings. The proceedings of all meetings and interviews shall be recorded.

**(i) Complaint Dispositions and Sanctions.** The board may:

(1) Dismiss a complaint that fails to allege the failure to perform a duty or an act of misconduct of the clerk.

(2) Dismiss a complaint of which the evidence does not support the allegations.

(3) Dismiss a complaint with confidential counseling regarding ethical obligations and recommending changes to behavior or procedures.

(4) Recommend mediation.

(5) Issue a warning letter alerting a clerk to the potential consequences of conduct that creates an appearance of impropriety or ethical misconduct.

(6) Issue an informal letter of reprimand for conduct that is unacceptable, but that is not serious enough to warrant a more formal sanction.

(7) Instruct a clerk to take specific action, attend specific educational programs on court management or clerk office operations, or participate in a mentoring program.

(8) Issue a formal public letter of censure.

(9) Refer the clerk complaint and board findings to the chief justice with a recommendation to limit duties of the clerk.

(10) Refer the clerk to Speaker of the House of Representatives for impeachment.

**(j) Notification of Board Action.** The board shall provide written notification to the complainant, the clerk, and the superior court presiding judge of the county in which the clerk serves. The notice of board action must include findings regarding the allegations of the complaint and the disposition including all sanctions imposed.

**(k) Review of Board Actions.**

(1) Informal actions taken by the board are not reviewable.

(2) A letter of censure is reviewable by the director, or designee.

(3) A referral to the chief justice with recommendation to limit the clerk from performing duties of the office of the clerk is reviewable by the director, or designee.

(4) A referral to the Speaker of the House of Representatives for impeachment is reviewable by the director, or designee.

**(l) Compliance with Directives of the Board or Orders of the Chief Justice.** Under the direction of the director or designee, the AOC shall monitor compliance with directives of the board or orders of the chief justice.

**(m) Administration.** The human resources officer of the AOC shall provide staff support for the board including maintenance and preservation of the board's records.

**(n) Public Access and Confidentiality.**

(1) Generally, records of complaints against clerks of court shall be available to the public following, but not before, final disposition.

- (A) Dismissed Cases. Only the complaint and the letter dismissing the complaint shall be public after all identifying information pertaining to the clerk, complainant, and court has been redacted.
- (B) Other Informal or Formal Dispositions: The record of dispositions and sanctions described in subsections (i)(4) through (10) shall be public after the complainant, the clerk, and presiding judge of the county in which the clerk serves have been notified of the outcome.

(2) All board correspondence, draft documents, computer records, investigative reports and files, attorney work product, and board deliberations are confidential.

**(o) Records and Files.**

(1) Maintenance of Records. All records of the board shall be maintained, preserved, or purged by the AOC in accordance with standards established by the director.

(2) Closed Files. A closed file is one involving any prior complaint, inquiry, investigation, report, informal disposition, or formal proceeding received or initiated by the board that the board had officially closed.

(3) Closed files may be referred to and used by the board or the clerk in connection with any subsequent proceeding for the purpose of determining the severity of the sanction, a pattern of misconduct, or exoneration of the clerk.